

**A Rosli bin Yang Danian v Datuk Mohd Zain bin Mohd Dom &
Ors**

B HIGH COURT (IPOH) — CIVIL SUIT NO 21NCVC-8-04 OF 2015
NOORIN BADARUDDIN JC
2 OCTOBER 2015

C *Civil Procedure — Writ of summons — Application to strike out — Plaintiff worked for ministry — Plaintiff dismissed from work — Plaintiff claimed for declaration by way of writ of summons and statement of claim — Defendant argued plaintiff should filed action by way of judicial review instead of writ of summons — Whether plaintiff's employment governed under public law*
D *— Whether plaintiff's application proper — Whether action should be made by way of judicial review — Rules of Court 2012 O 18 r 19 & O 53*

The plaintiff was an assistant enforcement officer grade N32 attached to the ministry. He was dismissed from his employment by the Disciplinary Board of Supporting Staffs (No 1) of the Ministry ('the disciplinary board') as he was absent from work without leave, approval or reasonable grounds for 313 days. The plaintiff then appealed to the Public Services Disciplinary Board of Appeal, Public Service Commission ('the appeal board') against the decision but the plaintiff's appeal was dismissed. Dissatisfied with the appeal board's decision the plaintiff filed the present action by way of writ of summons for a declaration that his dismissal was null and void, reinstatement and damages for wrongful dismissal. In response to the plaintiff's action, the defendants filed an application to strike out the action under O 18 r 19(1)(a) or (b) or (d) of the Rules of Court 2012 ('the ROC'). The defendants submitted that the plaintiff should have filed the application by way of judicial review under O 53 of the ROC instead of by writ of summons.

Held, allowing the defendants' application to strike out claim:

- H** (1) The plaintiff's action by filing the writ of summons and statement of claim was a deliberate attempt to circumvent the stringent requirements under O 53 of the ROC. As there was a specific procedure created to cater for this purpose, then the plaintiff should adhered to the requirement for such relief. The plaintiff's claim was solely on substantive principles of public law and therefore the appropriate process should be by way of judicial review under O 53 of the ROC. By filing the writ summons and statement of claim, the plaintiff had abused the process of the court and ought to be struck out (see paras 8 & 10).
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- (2) The plaintiff was a public servant pursuant to art 132 of the Federal Constitution; hence the terms of the plaintiff's employment were administered by the public law. The decision made by both the disciplinary board and the appeal board were made under a statutory power and this had injected the element of public law to attract remedies of administrative law making this case amenable to judicial review. Further, there was no trace of private law involvement nor did the circumstances justified the plaintiff's application to be an exception to the general rule (see paras 16–17 & 19).

[Bahasa Malaysia summary]

Plaintif adalah timbalan pegawai penguatkuasa gred N32 yang berkhidmat dengan kementerian. Dia telah dipecat daripada pekerjaannya oleh Lembaga Tatatertib Pekerja Pembantu (No 1) Kementerian ('lembaga tatatertib') kerana dia tidak hadir bekerja tanpa izin, kebenaran atau alasan munasabah selama 313 hari. Plaintif kemudiannya merayu kepada Lembaga Pengarah Rayuan Perkhidmatan Awam, Suruhanjaya Perkhidmatan Awam ('lembaga rayuan') terhadap keputusan tersebut tetapi rayuan plaintif ditolak. Tidak puas hati dengan keputusan lembaga rayuan plaintif memfailkan tindakan ini melalui writ saman untuk perisytiharan bahawa pemecatan kerjanya adalah batal dan tak sah, pengembalian semula kerja dan ganti rugi bagi pemecatan salah. Dalam menjawab kepada tindakan plaintif, defendan-defendan memfailkan permohonan untuk membatalkan tindakan di bawah A 18 k 19(1)(a) atau (b) atau (d) Kaedah-Kaedah Mahkamah 2012 ('KKM'). Defendan-defendan berhujah bahawa plaintif sepatutnya memfailkan permohonan melalui semakan kehakiman di bawah A 53 KKM dan bukan melalui writ saman.

Diputuskan, membenarkan permohonan defendan-defendan untuk membatalkan tuntutan:

- (1) Tindakan plaintif dengan memfailkan writ saman dan pernyataan tuntutan adalah percubaan sengaja untuk memintas kehendak ketat di bawah A 53 KKM. Memandangkan terdapat prosedur spesifik dibentuk untuk menangani bagi tujuan ini, dengan itu plaintif patut mematuhi kepada kehendak bagi relief sedemikian. Tuntutan plaintif adalah semata-mata atas prinsip-prinsip substantif undang-undang awam dan oleh itu proses yang wajar sepatutnya melalui semakan kehakiman di bawah 53 KKM. Dengan memfailkan writ saman dan pernyataan tuntutan, plaintif telah salahguna proses mahkamah dan patut dibatalkan (lihat perenggan 8 & 10).
- (2) Plaintif adalah penjawat awam berikutan perkara 132 Perlembagaan Persekutuan; maka terma-terma pekerjaan plaintif ditadbirkan oleh undang-undang awam. Keputusan yang dibuat oleh kedua-dua lembaga tatatertib dan lembaga rayuan dibuat di bawah kuasa statutori dan ini telah memasukkan unsur undang-undang awam untuk mendapatkan

- A remedi undang-undang tadbir membuatkan kes ini akur kepada semakan kehakiman. Selanjutnya, tidak terdapat kesan penglibatan undang-undang persendirian ataupun keadaan menjustifikasikan permohonan plaintif sebagai pengecualian kepada peraturan am (lihat perenggan 16–17 & 19).]

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Notes

For cases on application to strike out, see 2(5) *Mallal's Digest* (5th Ed, 2015) paras 10588–10589.

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Cases referred to

Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors [2010] 3 MLJ 145, FC (folld)

Subramaniam Vythilingam v The Human Rights Commission of Malaysia (SUHAKAM) & Ors [2003] MLJU 94; [2003] 6 CLJ 175, HC (refd)

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Legislation referred to

Federal Constitution art 132

Public Services Disciplinary Board Regulations 1993 regs 14, 15(1)

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Rules of Court 2012 O 18 rr 19(1)(a), (1)(b), (1)(d), O 53

Manjit Singh Mann (Manjit Singh Mann & Co) counsel for the plaintiff.

Lim Cheah Yit (Senior Federal Counsel, Attorney General's Chambers) for the defendants.

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Noorin Badaruddin JC:

- [1] The plaintiff, a government officer holding a post as assistant enforcement officer grade N32 with the Ministry of Domestic Trade Co-operatives and Consumerism ('the ministry') filed a writ of summons and statement of claim dated 7 April 2015 and 6 April 2015 accordingly seeking inter alia, a declaration that his dismissal was null and void, reinstatement and damages for wrongful dismissal.

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[2] The defendants filed an application to strike out the plaintiff's action under O 18 r 19(1)(a) or (b) or (d) of the Rules of Court 2012 on 24 June 2015. This court allowed the defendants' application to strike out the plaintiff's writ and statement of claim on 25 August 2015. Dissatisfied with the decision, the plaintiff lodged this appeal. The reasons for the decision now follow.

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BACKGROUNDS

[3] The plaintiff at the material time was a government officer attached to the ministry as an assistant enforcement officer grade N32. He was holding the

post since 2 January 2008. On 24 October 2011, the plaintiff was dismissed from his employment by the disciplinary board of supporting staffs (No 1) of the ministry ('the disciplinary board') as he was absent from work without leave or without approval or without reasonable grounds for 313 days.

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[4] Pursuant to regs 14 and 15(1) of the Public Services Disciplinary Board Regulations 1993, the plaintiff appealed to the Public Services Disciplinary Board of Appeal, Public Service Commission ('the appeal board') against the decision of the disciplinary board on 8 November 2011.

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[5] Upon deliberation and taking into consideration the reports by the plaintiff's head of department and the disciplinary board, the plaintiff's appeal was dismissed. The decision of the appeal board was conveyed to the plaintiff via letter dated 13 April 2012.

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[6] The plaintiff then filed the writ of summons dated 6 April 2015 seeking for:

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- (a) a declaration that his dismissal by the defendants with effect from 24 October 2011 was null and void;
- (b) a declaration that the decision by the appeal board in dismissing his appeal was null and void; and
- (c) an order for his reinstatement to his post and for payment of his salary, emoluments, interests and damages for wrongful dismissal.

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[7] From the facts deposed in the plaintiff's statement of claim, it was glaring that the plaintiff was challenging the decisions made by the public authorities ie the disciplinary board of the ministry and the appeal board of the public service commission.

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[8] This court agreed with the argument raised by the defendants that the plaintiff should have filed the application by way of judicial review under O 53 of the Rules of Court 2012 ('the ROC 2012'). This court found that by filing the writ of summons and statement of claim, the plaintiff's action had abused the process of the court and ought to be struck out.

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[9] Application challenging decision of a public authority is to be made under O 53 of the ROC 2012. Order 53 of the ROC 2012 states:

Order 53 Application for judicial review

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1 Application for judicial review (O 53 r 1)

(1) This Order shall govern all applications seeking the relief specified in paragraph 1 of the Schedule to the Courts of Judicature Act 1964 and for the purposes therein specified.

- A** (2) This Order is subject to the provisions of Chapter VIII of Part 2 of the Specific Relief Act 1950 (Act 137).
- 2 Applications (O 53 r 2)
- B** (1) An application for any of the reliefs specified in paragraph 1 of the Schedule to the Courts of Judicature Act 1964 (other than an application for an order of habeas corpus) shall be in Form 109.
- (2) An application for judicial review may seek any of the reliefs, including a prayer for a declaration, either jointly or in the alternative in the same application if it relates to or is connected with the same subject matter.
- C** (3) Upon the hearing of an application for judicial review, the Court shall not be confined to the relief claimed by the applicant but may dismiss the application or make any orders, including an order of injunction or monetary compensation:
- Provided that the power to grant an injunction shall be exercised in accordance with the provisions of section 29 of the Government Proceedings Act 1956 (Act 359) and
- D** section 54 of the Specific Relief Act 1950.
- (4) Any person who is adversely affected by the decision, action or omission in relation to the exercise of the public duty or function shall be entitled to make the application.
- E** 3 Leave (O 53 r 3)
- (1) An application under this Order shall not be made unless leave therefor has been granted in accordance with this rule.
- (2) An application for leave must be made ex parte to a Judge in Chambers and must be supported by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and by affidavits verifying the facts relied on.
- F** (3) The applicant must give notice of the application for leave not later than three days before the hearing date to the Attorney General's Chambers and must at the same time lodge in those Chambers copies of the statement and affidavits.
- G** (4) The Judge may, in granting leave, impose such terms as to costs and as to the giving of security as he thinks fit.
- (5) The grant of leave under this rule shall not, unless the Judge so directs, operate as a stay of the proceedings in question.
- H** (6) An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of application first arose or when the decision is first communicated to the applicant.
- (7) The Court may, upon an application, extend the time specified in rule 3(6) if it considers that there is a good reason for doing so.
- I** (8) An application to extend time must be served on all respondents and shall be heard inter partes.
- 4 Notice (O 53 r 4)
- (1) Where leave has been granted under this rule, the applicant shall, within fourteen days after the grant of such leave, file a notice in Form 110.

(2) Upon extraction of the sealed copy of Form 110, the applicant shall serve a copy of the same together with a copy of the statement and all affidavits in support on all persons directly affected by the application not later than fourteen days before the date of hearing specified in the Form 110. **A**

5 Damages (O 53 r 5)

(1) On an application for judicial review the Court may, subject to paragraph (2), award damages to the applicant if – **B**

(a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates; and

(b) the Court is satisfied that, if the claim has been made in an action begun by the applicant at the time of making his application, he could have been awarded damages. **C**

(2) Order 18 rule 12, shall apply to a statement relating to a claim for damages as it applies to a pleading.

6 Discovery, etc (O 53 r 6) **D**

After leave has been granted, any party to an application for judicial review may apply to the Judge for discovery and inspection of documents pursuant to Order 24, to administer interrogatories pursuant to Order 26, or to cross-examine the deponent of any affidavit filed in support of or in opposition to the application pursuant to Order 38. **E**

7 Amendment (O 53 r 7)

(1) The Judge may allow the statement to be amended, and may allow further affidavits to be used if they deal with new matters arising out of any affidavit of any other party to the application, and where the applicant intends to amend his statement or use further affidavits, he must immediately give notice of his intention and of any proposed amendment of his statement to every other party. **F**

(2) Every party to the application must supply to any other party copies of the affidavits which he proposes to use at the hearing.

8 Other persons who may be heard (O 53 r 8) **G**

(1) Upon the hearing of an application for judicial review, any person who desires to be heard in opposition to the application and appears to the Judge to be a proper person to be heard may be heard notwithstanding that he has not been served with the cause papers in the matter.

(2) Where on application for judicial review an order of certiorari is made in any such case, the order shall direct that the proceedings shall be quashed forthwith on their removal to the High Court. **H**

9 No setting aside of order (O 53 r 9)

An application to set aside any order made by the Judge shall not be entertained, but the aggrieved party may appeal to the Court of Appeal. **I**

[10] Obviously, the conditions laid down by O 53 of the ROC 2012 are very stringent and any attempt to circumvent these conditions by filing a different mode of application apart from the said order must be seen as an abuse process

- A of the court. The plaintiff's action by filing the writ of summons and statement of claim was a deliberate attempt to circumvent the stringent requirements enumerated in O 53 of the ROC 2012. As there is an explicit procedure created to cater for this purpose, then the plaintiff should have adhered to the requirement for such relief and the action must commence according to what
- B was prescribed by O 53 of the ROC 2012. The plaintiff's claim was solely on substantive principles of public law and therefore the appropriate process should be by way of O 53 of the ROC 2012.
- C [11] Abdul Malik Ishak J (as His Lordship then was) in *Subramaniam Vythilingam v The Human Rights Commission of Malaysia (SUHAKAM) & Ors* [2003] MLJU 94; [2003] 6 CLJ 175 at p 39; pp 176 and 203–206 of the judgment stated as follows:
- D The plaintiff should have pursued his public law remedy through judicial review proceedings under O 53 of the RHC and not by way of an originating summons. By not pursuing the remedy through O 53, the plaintiff was deliberately attempting to get around the stringent requirements enumerated in O 53 of the RHC, including inter alia the need to serve the leave application on the Attorney General's Chambers. Enclosure (1) thus constituted an abuse of the process of the court and
- E ought to be struck out.
- [12] The Federal Court in *Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 3 MLJ 145 had affirmed the position of the law that the appropriate mode for any application to challenge the decision of a public authority by any aggrieved party is by way of O 53 of the Rules of High Court 1980. In that case, the appellant, a government officer, absented himself from work following a dispute with his superiors. On 7 February 2003, the appellant's solicitors were informed that the appellant had been dismissed from service vide *gazette* Notification dated 25 October 2001. On 15 January 2004, the appellant filed a writ of summons and statement of claim against the respondents seeking, inter alia, a declaration that his dismissal was null and void, and damages for wrongful dismissal. The respondents successfully struck out the appellant's action in the High Court. His appeal to the Court of Appeal was also dismissed. The appellant obtained leave to appeal to the Federal Court on two questions, vis (i) whether pursuant to the amended O 53 of the Rules of the High Court 1980 ('the RHC'), an application to challenge the decision of a public authority could only be instituted by way of judicial review under O 53 of the RHC; and (ii) whether challenging the decision of a public authority by way of writ and statement of claim, instead of through an application for judicial review under O 53 of the RHC, constituted an abuse of the process of court. The appellant's main contention was that the procedure under O 53 of the RHC was not a mandatory procedure – a person aggrieved with the decision of a public body could therefore seek relief by way of writ or originating summons.

[13] The approach taken by the Federal Court in determining the mode of application is that the court must determine whether 'the impugned decision is amenable to judicial review'. At para 21 of the judgment, the Federal Court stated:

[21] In view of this, let us begin by first asking ourselves a preliminary question: is the appellant's complaint or grievance amenable for judicial review (before even considering whether the procedure adopted by him is appropriate). If his complaint is not amenable for judicial review then he can commence his action by writ or originating summons; there is no issue on the process. So first we have to determine the parameter of matters amenable for judicial review. It is widely accepted that not every decision made by an authoritative body is suitable for judicial review. To qualify there must be sufficient public law element in the decision made. For this, it is necessary to examine both the source of the power and the nature of the decision made; whether the decision was made under a statutory power.

[14] The Federal Court further stated at para 36 of the judgment as follows:

[36] Thus, the decision to dismiss the appellant was made under a statutory law by a body who acted within the scope of such statutory power. Though this decision involves the dismissal of an employee by an employer, much like a master dismissing his servant, which is a private law matter, the fact that there are statutory conditions and restrictions imposed by the Regulations on the conduct and dismissal of the appellant underpins the public law element in this case. This is not a case of a public authority being delegated with authority to hire and fire much like what has occurred in *R v East Berkshire Health Authority, ex parte Walsh and Wendal Swann v Attorney General* of the Turks and Caicos Islands. Here, a special statutory provision bearing directly upon the right of a public authority to dismiss the appellant. This injects the element of public law necessary in this context to attract the remedies of administrative law making this case amenable for judicial review.

[15] Further approach was explained by the Federal Court after the approach whether 'the impugned decision is amenable to judicial review' at paras 60 and 61:

[60] Aside from mandamus, prohibition, quo warranto and certiorari, or any others described under the pre-amended O 53 of the RHC, an alternative remedy for an aggrieved party seeking relief against a public authority on his infringed right to which he was entitled to protection under public law is for a declaration. The courts had for a long time recognised their power to grant a declaration under common law. But s 41 of the Specific Relief Act 1950 armed them with the statutory authority to do so. It is also commonly accepted that O 15 r 16 of the RHC also provides the High Court with such power (see Lord Diplock's judgment in *O'Reilly v Mackman*). However, O 53 of the RHC sets out a specific procedure for an aggrieved party seeking relief, including a declaration, against a public authority on his infringed right to which he was entitled to protection under public law to follow. It is our view that when such an explicit procedure is created to cater for this purpose, then as a general rule all such application for such relief must commence according to what is set down in O 53 of the RHC otherwise it would be liable to

A be struck off for abusing the process of the court. This general rule enunciated in *O'Reilly v Mackman* has in fact been acknowledged by this court in *Majlis Perbandaran Ampang Jaya v Steven Phoa Cheng Loon & Ors* and repeated in YAB Dato' Dr Zambry. However, like all general rule, there are exceptions. This again

B was recognised by Lord Diplock in *O'Reilly v Mackman* where he referred to 'particularly where the invalidity of the decision arises as a collateral issue in a claim for infringement of a right of the plaintiff arising under private law or where none of the parties objects to the adoption of the procedure by writ, or originating summons'. Then of course there is the exception for a claim against the public

C authority for negligence as decided in *Majlis Perbandaran Ampang Jaya v Steven Phoa Cheng Loon & Ors*. There may be others and these 'are left to be decided on a case to case basis' as spoken of by Lord Diplock in *O'Reilly v Mackman*. The circumstances in YAB Dato' Dr Zambry is obviously one of them where this court found that a challenge by the appellants of their suspension from attending a State Legislative Assembly is a matter that affects their legal status is an exception. For this, the aggrieved party can commence their claim by way of an originating summons rather than an application under O 53 of the RHC.

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[61] We observed that a challenge on the use of appropriate procedure is very much fact based. Thus, it is necessary for a judge when deciding on such matter to first ascertain whether there is a public law element in the dispute. If the claim for infringement is based solely on substantive principles of public law then the appropriate process should be by way of O 53 of the RHC. If it is a mixture of public and private law then the court must ascertain which of the two is more predominant. If it has substantial public law element then the procedure under O 53 of the RHC must be adopted. Otherwise it may be set aside on ground that it abuses the court's process. But if the matter is under private law though concerning

E a public authority, the mode to commence such action under O 53 of the RHC is not suitable. Aside from this, there could be other circumstances like the kind in YAB Dato' Dr Zambry. Much depends on the facts of the case. But generally the court should be circumspect in allowing a matter which should be by way of O 53 of the RHC to proceed in another form. To say that it is opened to any applicant seeking judicial review to elect any mode he prefers, as implied in *Kuching Waterfront*, would, in our considered opinion, be rendering O 53 of the RHC redundant. This is certainly not the intention of the drafters of this rule who had a purpose in mind. When the purpose of this rule is in the interest of good administration then this rule must be adhered to except in the limited and exceptional circumstances discussed.

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[16] The plaintiff was an enforcement officer of grade N32 attached to the ministry. He was a public servant according to art 132 of the Federal Constitution. Article 132 of the Federal Constitution states:

I Article 132 Public services.

(1) For the purposes of this Constitution, the public services are –

- (a) the armed forces;
- (b) the judicial and legal service;

- (c) the general public service of the Federation; A
- (d) the police force;
- (e) (Repealed);
- (f) the joint public services mentioned in Article 133; B
- (g) the public service of each State; and
- (h) the education service.

(2) Except as otherwise expressly provided by this Constitution, the qualifications for appointment and conditions of service of persons in the public services other than those mentioned in paragraph (g) of Clause (1) may be regulated by federal law and, subject to the provisions of any such law, by the Yang di-Pertuan Agong; and the qualifications for appointment and conditions of service of persons in the public service of any State may be regulated by State law and, subject to the provisions of any such law, by the Ruler or Yang di-Pertua Negeri of that State. C

(2A) Except as expressly provided by this Constitution, every person who is a member of any of the services mentioned in paragraphs (a), (b), (c), (d), (f) and (h) of Clause (1) holds office during the pleasure of the Yang di-Pertuan Agong, and, except as expressly provided by the Constitution of the State, every person who is a member of the public service of a State holds office during the pleasure of the Ruler or Yang di-Pertua Negeri. D

(3) The public service shall not be taken to comprise – E

- (a) the office of any member of the administration in the Federation or a State; or
- (b) the office of President, Speaker, Deputy President, Deputy Speaker or member of either House of Parliament or of the Legislative Assembly of a State; or F
- (c) the office of judge of the Federal Court, the Court of Appeal or a High Court; or
- (d) the office of member of any Commission or Council established by this Constitution or any corresponding Commission or Council established by the Constitution of a State; or G
- (e) such diplomatic posts as the Yang di-Pertuan Agong may by order prescribe, being post which but for the order would be posts in the general public service of the Federation. H

(4) References in the Part, except in Articles 136 and 147, to person in the public service or to members of any of the public service shall not apply to –

- (a) (Repealed);
- (b) the Attorney General or, if provisions for the manner of his appointment and removal from office is specifically included in the Constitution of the State, or if he is appointed otherwise than from among the members of the judicial and legal service or of the public service of the State, the legal adviser of any State; or I

- A** (c) a member of the personal staff of the Yang di Pertuan Agong or of a Ruler or Yang di-Pertua Negeri; or
- (d) in the case of Malacca and Penang, if provision is made by State law for their appointment –
- B** (i) the President of the Religious Affairs Department;
- (ii) the Secretary of the Religious Affairs Department;
- (iii) the Mufti;
- (iv) the Kadi Besar; or
- C** (v) a Kadi.

D [17] It could not be gainsaid that the terms of the plaintiff's employment was a private treaty as the relationship between the plaintiff and the defendants were administered by the public law. Therefore, there was sufficient public law element in the decision made. The decision made by both the disciplinary board of the ministry as well as the appeal board of the public service commission were made under a statutory power and this had injected the element of public law to attract remedies of administrative law making this case

E amenable to judicial review.

[18] The Federal Court cited a number of authorities on this point. At paras 40–42 the court cited:

- F** [40] In Malaysia, there are a number of authorities on this point. Starting with the High Court, we have the case of *Ghozi Abu Bakar v Majlis Angkatan Tentera & Anor* [2006] 4 CLJ 291 where the plaintiff, a member of the Royal Malaysian Navy, sued by way of writ for a declaration that he was wrongly decommissioned and retired. In her judgment, Noor Azian Shaari JC (as she then was) said:
- G** Since the plaintiff is seeking a remedy on an allegation that a public authority that is entitled to protection under the law has exceeded or infringed the law, the plaintiff must proceed by way of a judicial review and not by way of an ordinary action ie, in the case the plaintiff has chosen by way of writ and statement of claim for an injunction or otherwise.
- H** By filing the writ and statement of claim and not by way of O 53 of the RHC it appears that the plaintiff is trying to circumvent the leave requirement of O 53 of the RHC.
- I** [41] This was followed by *Maisi bin Gating v Kerajaan Malaysia* (an unreported decision) where the plaintiff, a member of the Royal Malaysian Police, sought by way of a writ action to declare that the defendant's decision to dismiss him was unlawful. Tee Ah Sing J dismissed the plaintiff's claim on the ground that it is an abuse of process. The proper mode should be by way of judicial review under O 53 of the RHC since the plaintiff was challenging the decision made by the defendants pursuant to a Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993.
- [42] Another High Court decision against the use of a writ to commence such

action rather than by way of O 53 of the RHC is *Kenniah a/l Sinnasamy v Ketua Polis Seberang Perai & 2 Ors* (unreported). The plaintiff's claim for a declaration by way of a writ that he was unlawfully dismissed from the police force was struck out on the ground that it was an abuse of the process of the court.

[19] From the writ and the statement of claim filed by the plaintiff in this action and quoting the Federal Court in *Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors* again, there is no trace of private law involvement nor do the circumstances justify the plaintiff's application to be an exception to the general rule.

[20] For the reasons stated above, this court allowed the defendant's application to strike out the writ and statement of claim filed by the plaintiff on the ground that the action was an abuse of the process of the court under O 18 r 19(d) of the ROC 2012.

Defendants' application to strike out claim allowed.

Reported by Dzulkarnain Ab Fatar

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